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COMMONWEALTH OF VIRGINIA, *ex rel.* STATE CORPORATION COMMISSION

v.

**AIRCABLE OF ROANOKE, LLC,
DIGITAL BROADCAST CORPORATION,
Defendants**

**CASE NO. SEC000069
CASE NO. SEC000072**

REPORT OF ALEXANDER F. SKIRPAN, JR., HEARING EXAMINER

December 19, 2000

In this Rule To Show Cause, the Commission ordered AirCable of Roanoke, LLC, (“AirCable”) to appear before the Commission and show cause why it should not be held in contempt of the Commission, ordered to produce subpoenaed documents, and penalized for refusing to comply with the Commission’s Subpoena. In addition, the Division of Securities and Retail Franchising (“Division”) asks the Commission to issue a temporary injunction against Digital Broadcast Corporation (“Digital”) and AirCable to enjoin them from offering and selling securities in and from Virginia for a period of one hundred and twenty days.

HISTORY OF THE CASE

On August 7, 2000, the Division requested information from Digital and AirCable as part of an investigation into whether these companies had violated the Virginia Securities Act.¹ In a letter by counsel dated August 11, 2000, Digital and AirCable asserted their Fifth Amendment Privilege and declined to produce documents without a grant of transactional immunity. On August 17, 2000, the Commission issued its Subpoena To Produce Documents (“Subpoena”) ordering AirCable to produce the requested documents on or before September 22, 2000. In a letter dated September 19, 2000, and stamped received by the Office of General Counsel on September 26, 2000, counsel for Digital and AirCable again asserted Fifth Amendment Privilege, and objected to the scope of the questions in the Subpoena. On October 27, 2000, the Commission issued its Rule To Show Cause in which it: (i) ordered AirCable to appear before the Commission and show cause why it should not be held in contempt of the Commission and ordered to produce the documents forthwith, and why AirCable should not be penalized pursuant to §§ 12.1-33 and 13.1-521 of the Code of Virginia for refusing to comply with the Commission’s Subpoena, and (ii) assigned this matter to a Hearing Examiner.

On November 9, 2000, the Division filed a Motion for Temporary Injunction against Digital and AirCable to enjoin them from offering and selling securities in and from Virginia for a period of one hundred and twenty days. In support of the Motion for Temporary Injunction the

¹ Virginia Code § 13.1-501 *et seq.*

Division filed the affidavit of Thomas C. Bayly, senior investigator with the Division. In his affidavit, Mr. Bayly described information that indicated Digital and AirCable were continuing to offer and sell securities in the Commonwealth of Virginia.

A hearing was convened on November 29, 2000. Representing Digital and AirCable at the hearing were Claude Lauck, Esquire, and John C. Nimmer, Esquire. Debra Bollinger, Esquire, appeared on behalf of the Division. A transcript of the hearing is filed with this Report. During the hearing, AirCable filed two motions. First, AirCable filed its Assertion of Statutory and Constitutional Privileges Against Self-Incrimination ("Privilege Motion"). Second, AirCable filed a Motion to Quash or Otherwise Modify Scope of Subpoena ("Motion to Quash"). The Hearing Examiner agreed to note for the record AirCable's assertion of its Fifth Amendment Privilege. The Hearing Examiner deferred ruling on AirCable's Motion to Quash.

SUMMARY OF THE RECORD

Gary S. Nerlinger, chief operating officer of Digital, testified that Digital is a Delaware corporation with home offices in Nassau County, New York.² AirCable is a Virginia LLC formed in February 1998 to provide digital wireless television service to Roanoke, Virginia.³ Mr. Nerlinger acknowledged that Digital registered with the Securities and Exchange Commission to offer shares to be issued in Virginia⁴ and that AirCable made offers of securities to "accredited investors."⁵ Neither Digital nor AirCable registered its securities with the Division.⁶ Indeed, the Division learned of Digital and AirCable's activities and began its investigation only when one of AirCable's prospective investors contacted the Division.⁷

In connection with its investigation, on August 7, 2000, the Division requested the following:

1. A list of names, addresses, and phone numbers of all Virginia purchasers of [Digital] stock or promissory notes of [AirCable].
2. The names of all selling agents to the above-named investors.
3. All disclosure materials provided to prospective investors.
4. Financial statements of [Digital] and [AirCable] for the last three years.

² Exhibit GSN-5, at 1.

³ *Id.* at 1-2.

⁴ *Id.* at 2-3.

⁵ *Id.* at 4.

⁶ Thomas, Tr. at 39.

⁷ Affidavit of Thomas Bayly, dated November 3, 2000; Bayly Tr. at 16.

5. Any exemption being claimed from the registration provisions of the Virginia Securities Act.⁸

The request of the Division was made by certified mail.⁹ Digital and AirCable acknowledged receipt of the Division's request.¹⁰ Nonetheless, counsel for Digital and AirCable refused to answer the Division's request.¹¹ Instead, counsel for Digital and AirCable asserted a Fifth Amendment Privilege and sought transactional immunity as a prerequisite for producing documents.¹²

On August 17, 2000, the Commission issued its Subpoena.¹³ Specifically, the Commission ordered AirCable to provide the Division the following documents:

A. All documents which contain the name, address and/or telephone number of all persons who were offered or sold promissory notes of [AirCable] or other securities.

B. All documents provided or to be provided to persons identified in paragraph A.

C. All documents which contain the name of all selling agents of the aforesaid securities.

D. All financial documents of [AirCable].

E. All financial institution documents of [AirCable].

F. All tax returns of [AirCable] for the last three years.¹⁴

The Commission's Subpoena was served upon AirCable.¹⁵ AirCable does not contest service.¹⁶ However, AirCable refused to comply with the Commission's Subpoena by again asserting a Fifth Amendment Privilege and by contesting the scope of the information requested.¹⁷

⁸ Exhibit TB-1.

⁹ Exhibit TB-2.

¹⁰ *Id.*; Tr. at 18.

¹¹ Exhibit TB-3.

¹² *Id.*

¹³ Exhibit TB-4.

¹⁴ *Id.*

¹⁵ *Id.* at 3.

¹⁶ Nimmer, Tr. at 4.

¹⁷ Nimmer letter dated September 19, 2000, attached to the Commission's Rule to Show Cause in this case. *See also*, Privilege Motion and Motion to Quash.

Regarding AirCable's assertion of Fifth Amendment Privilege, AirCable stresses that Virginia statutes require assertion of the privilege before it can be claimed.¹⁸ Though AirCable indicated that it would comply with any "final, nonappealable order of the Commission" to produce documents, AirCable requests Commission recognition of its privilege "as a condition precedent to compelled disclosure."¹⁹

As to the scope of the Subpoena, AirCable seeks several modifications. First, AirCable objects to supplying information pertaining to offers and sales of securities it made outside of Virginia.²⁰ Second, in lieu of all financial documents, tax returns, and all financial institution documents, AirCable offers the following:

A. A list of Virginia purchasers of AirCable securities.

B. A copy of any offering circular, prospectus, private placement memorandum, and related documentation provided to AirCable investors.²¹

For failing to comply with the Commission's Subpoena, the Division seeks the maximum sanctions permitted under § 12.1-33 of the Virginia Code of \$10,000 plus \$10,000 a day, beginning with the date of the hearing and continuing until AirCable satisfies the Commission's Subpoena.²² In addition, the Division requests a temporary injunction against Digital and AirCable to enjoin them from "selling securities in and from the Commonwealth of Virginia for a period of one hundred and twenty (120) days in order for the Commission to determine whether Digital and AirCable should be permanently enjoined from offering and selling securities in the Commonwealth of Virginia."²³

DISCUSSION

As outlined above, this case encompasses the Commission's Rule To Show Cause and the Division's Motion for Temporary Injunction. Each of these topics is discussed separately below.

Rule To Show Cause

AirCable raises two defenses for failing to comply with the Commission's Subpoena. First, AirCable asserts its Fifth Amendment Privilege and asks that such an assertion be noted by the Commission prior to it being required to provide any of the Subpoenaed information. During the hearing AirCable's assertion of privilege was noted.²⁴ Nonetheless, AirCable's request for official recognition of its assertion of privilege was satisfied on October 27, 2000, when the

¹⁸ Privilege Motion at 1.

¹⁹ *Id.* at 2; Tr. at 8-9.

²⁰ *Id.* at 1.

²¹ *Id.* at 1-2.

²² Bayly, Tr. at 21-22.

²³ Motion For Temporary Injunction at 2-3.

²⁴ Tr. at 13.

Commission issued its Rule To Show Cause in this matter. That is, AirCable's assertion of privilege was stated explicitly in the Rule To Show Cause, which also contained, as an attachment, a copy of a letter from AirCable's counsel making such an assertion. Thus, AirCable's "condition precedent to compelled disclosure" was satisfied by the Commission on October 27, 2000.

Second, AirCable argues that the Commission's Subpoena was overbroad and burdensome and that its extraterritorial inquiries violate the United States Constitution's Commerce Clause.²⁵ That is, AirCable questions whether the Commission has the authority to regulate the offers and sales of securities by a Virginia company to residents of other states. AirCable contends that the Commission's authority, and hence its Subpoena should be limited to offers and sales of securities to Virginia residents.

In support of its arguments to limit the Commission's Subpoena, AirCable makes the following claims. First, AirCable asserts that the securities it sold were "federal covered securities."²⁶ Second, even without federal preemption, AirCable avers that "[a] state cannot impose its regulatory scheme on another state in an effort to control beyond the boundaries of a state."²⁷ Third, if federal preemption is present and precedent is followed that permits a state to regulate the extraterritorial offering activities of a domestic corporation, then AirCable contends that Virginia statutory law "only anticipates the regulation of in-state transactions."²⁸

The Division takes the opposite view. Specifically, the Division maintains that the Virginia Securities Act extends to offers and sales of securities by Virginia companies to nonresidents of Virginia.²⁹ In addition, the Division submits that it cannot be required to establish jurisdiction in this matter until after it has completed its investigation.³⁰

Virginia Code § 13.1-518 grants the Commission broad powers to investigate violations or potential violations of the Virginia Securities Act. For example, § 13.1-518 directs the Commission to "make such investigations within or *outside* of this Commonwealth as it deems necessary to determine whether any person has violated . . . the provisions of [the Virginia Securities Act] . . ." (emphasis added). Furthermore, this section grants the Commission with the power to require "the production of any papers for the purposes of such investigation."

Moreover, as discussed in *Commonwealth of Virginia, ex rel. State Corporation Commission v. Fred Woodbury*,³¹ the Division is not required to prove jurisdiction prior to the completion of its investigation. The decision in that case was based on legal precedent traced

²⁵ Digital and AirCable Brief at 1.

²⁶ *Id.* at 2-3.

²⁷ *Id.* at 3.

²⁸ *Id.* at 7.

²⁹ Division Brief at 3-5.

³⁰ *Id.* at 5-7.

³¹ Case No. SEC980033, Report of Alexander F. Skirpan, Jr., Hearing Examiner (August 13, 1998), Judgment Order (September 30, 1998) (adopting Hearing Examiner Recommendations) ("*Woodbury*").

back to the U.S. Supreme Court's determination in *Oklahoma Press Publishing Co. v. Walling*³² that equated an agency administrator's investigative power to that of a grand jury. In the words of the court, such an administrator "shall not act arbitrarily or in excess of his statutory authority, but this does not mean that his inquiry must be 'limited . . . by forecasts of the probable result of the investigation'"³³

In this case, AirCable questions the Commission's statutory authority. First, AirCable argues that its offerings are "federal covered securities" pursuant to 15 U.S.C. § 77r. On brief, AirCable submits that according to 15 U.S.C. § 77r(a), with respect to a covered security, a state may not "directly or indirectly prohibit, limit, or impose any conditions upon the use of . . . any offering document that is prepared by or on behalf of the issuer"³⁴ However, AirCable omits the following exception:

this subparagraph does not apply to the laws, rules, regulations, or orders, or other administrative actions of the State of incorporation of the issuer.³⁵

In addition, 15 U.S.C. § 77r(c) explicitly preserves state jurisdiction "to investigate and bring enforcement actions with respect to fraud or deceit, or unlawful conduct by a broker or dealer, in connection with securities or securities transactions." Thus, 15 U.S.C. § 77r does not preempt an investigation of AirCable, a Virginia LLC, by the Commission.

Second, AirCable asserts that the Commerce Clause prohibits extraterritorial regulation by the Commission. Nonetheless, the weight of the authority cited or distinguished by AirCable tends to support the contrary view, that the Commission may regulate security offerings by companies organized under the laws of the Commonwealth. Neither of the cases cited by AirCable in support of its position related to the regulation of securities offered by a company formed under the laws of the regulating state.³⁶ By contrast, *Arizona Corp. Comm. v. Media Products, Inc.*,³⁷ which AirCable attempts to distinguish, concerned Arizona's regulation of the sale of securities to out-of-state shareholders by a Delaware corporation operating in Arizona. AirCable concedes that in *Media Products* the Arizona Court of Appeals held that a state may regulate a domestic corporation's out-of-state activities and that had Media Products been an Arizona corporation, Arizona would have been within its rights to regulate its out-of-state offering. Similarly, in *A.S. Goldmen & Co. v. New Jersey Bureau of Sec.*,³⁸ the United States Court of Appeals for the Third Circuit found that New Jersey could regulate in state offers and sales of securities to out-of-state buyers.³⁹ Finally, in *CTS Corp. v. Dynamics Corp. of*

³² 327 U.S. 186 (1946).

³³ *Id.* at 216. (citation omitted).

³⁴ Digital and AirCable Brief at 2.

³⁵ 15 U.S.C. § 77r(a)(2).

³⁶ *Healy v. Beer Institute*, 491 U.S. 324 (1989) (concerned the pricing of beer imported from other states), and *United States v. New Britain*, 347 U.S. 81 (1953) (concerning property liens).

³⁷ 763 P.2d 527 (1988) ("*Media Products*").

³⁸ 163 F.3d 780 (3rd Cir. 1999) ("*Goldmen*").

³⁹ *Id.* at 788-89.

America,⁴⁰ the United States Supreme Court upheld an Indiana statute regulating acquisition of control shares in Indiana corporations.

The Division offers *Lintz v. Carey Manor Limited*,⁴¹ in support of extension of the Virginia Securities Act to offers and sales of securities by Virginia companies to out-of-state purchasers. In *Lintz* the United States District Court for the Western District of Virginia up held application of the Virginia Securities Act to sales of securities by a Virginia company to out of state purchasers. Consistent with *Media Products*, *Goldmen*, and *CTS Corp.*, the court in *Lintz* suggests that any jurisdictional questions must be resolved by examining the nexus between the securities transaction and the state.⁴² Recognizing this, both AirCable and the Division offer assessments of the nexus of the Virginia Securities Act and the transactions conducted by AirCable. However, for purposes of assessing the scope of the Commission's Subpoena, as in *Woodbury*, the Division should not be required to establish jurisdiction prior to completing its investigation. The established principle that Virginia may regulate the sale of securities by Virginia companies to out-of-state investors of companies is all that is needed in this case.

Nonetheless, I find that based on the record in this case, a sufficient nexus exists between the Virginia Securities Act and the transactions conducted by AirCable. AirCable is a limited liability company formed under the laws of Virginia.⁴³ AirCable's principal offices are located at 3410-B West Main Street, Salem, Virginia.⁴⁴ Securities were issued by AirCable to finance its digital wireless television system in Roanoke, Virginia.⁴⁵ Offers of securities were made to prospective subscribers its digital wireless television system in Roanoke, Virginia.⁴⁶ Consequently, I find the Commission's Subpoena complies with the Commerce Clause of the United States Constitution.

Lastly, AirCable claims that the Virginia Securities Act does not authorize the regulation of extraterritorial offering activities of Virginia companies. AirCable bases this assertion on a comparison of the Arizona and Virginia statutes. More specifically, AirCable observes that Arizona's statute required the registration of transactions "within or from" Arizona.⁴⁷ AirCable points out that "or from" does not appear in the Virginia Securities Act.⁴⁸

Virginia Code § 13.1-507 states:

It shall be unlawful for any person to offer or sell any security unless (i) the security is registered under this chapter, (ii) the security or transaction is exempted by this chapter, or (iii) the security is a federal covered security. . . .

⁴⁰ 481 U.S. 69 (1987) ("*CTS Corp.*").

⁴¹ 613 F. Supp. 543 (W.D. Va., 1985) ("*Lintz*").

⁴² *Id.* at 550.

⁴³ Exhibit GSN-5, at 1; Exhibit GSN-9.

⁴⁴ Exhibit GSN-9, at Appendix C, page 1.

⁴⁵ Exhibit GSN-5, at 3-4.

⁴⁶ *Id.* at 4.

⁴⁷ Digital and AirCable Brief at 7.

⁴⁸ *Id.*

Nothing in the language of § 13.1-507 suggests that it is limited to activities occurring solely within Virginia. Indeed, § 13.1-518, which provides the Commission with authority to investigate violations or potential violations of the Virginia Securities Act, explicitly provides for investigations to be made outside of Virginia. Therefore, based on the language of these statutes, and in light of the court decisions such as *Lintz*, I find that the Virginia Securities Act specifically authorizes the regulation of extraterritorial offering activities of Virginia companies.

Accordingly, based on the record of this case, I find that AirCable has failed to show legal justification or excuse for its refusal to produce documents as ordered by the Commission in its Subpoena. AirCable's Motion to Quash is hereby denied. Moreover, sanctions should be imposed. Virginia Code § 12.1-33 provides for a fine of up to \$10,000 for failure to obey an order of the Commission, with each day's continuance as a separate offense. At hearing, AirCable agreed to provide a list of names and addresses of Virginia purchasers of AirCable securities and any offering, circular, prospectus, private placement memorandum, and related documents provided to AirCable investors.⁴⁹ With the filing of its brief, AirCable provided the Division with the name and address of three Virginia purchasers of AirCable securities. Based on the facts and circumstances of this case, the relative strength or weakness of AirCable's legal arguments, and upon the information provided to date by AirCable, I find that AirCable should be fined \$5,000 for failing to obey the Commission's Subpoena and should be subject to a daily fine of \$5,000 per day beginning one day after the Commission's judgment order in this case and continuing until AirCable provides all of the documents ordered to be produced by the Commission's Subpoena.

Temporary Injunction

As described above, the Division has asked that Digital and AirCable be enjoined for 120 days from any further offers and sales of securities in violation of the Virginia Securities Act. In support of its request, the Division filed the affidavit of Mr. Bayly which describes evidence he has gathered that indicates that Digital and AirCable are offering and selling unregistered securities in Virginia. Digital and AirCable argue that the requested injunctive relief is inappropriate. Specifically they maintain that: (i) the civil and criminal sanctions of the Virginia Securities Act provide "ample legal remedies;"⁵⁰ (ii) their defenses make it unlikely that the Division will prevail;⁵¹ (iii) the Division has failed to demonstrate irreparable injury if the temporary injunction is not granted;⁵² and (iv) a temporary injunction would create a hardship for Digital as such an injunction would eliminate numerous federal and state exemptions.⁵³

Virginia Code § 13.1-519 vests the Commission with "all the power and authority of a court of record as provided in Article IX, Section 3 of the Constitution of Virginia to issue a temporary or permanent injunction against any violation or attempted violation of any provision of this chapter"

⁴⁹ Motion to Quash; Tr. at 47-48.

⁵⁰ Digital and AirCable Brief at 7.

⁵¹ *Id.* at 7-8.

⁵² *Id.* at 8.

⁵³ *Id.* at 8-10.

The Division contends that under Virginia law, when a statute empowers a court to grant injunctive relief, the party seeking an injunction is not required to establish the traditional prerequisites before the injunction can be issued.⁵⁴ All that is required is proof that the statute or regulation has been violated.⁵⁵ The Division cites *Carbaugh v. Solem*⁵⁶ and *Va. Bd. SPCA v. S. Hampton Rds.*⁵⁷ in support of this requirement. In *Carbaugh* the Virginia Supreme Court held, “When the General Assembly determines that certain conduct is inimical to the public interest, a petition for an injunction need not contain an allegation of ‘irreparable injury’.”⁵⁸ This holding is repeated by the Virginia Supreme Court in *SPCA* which adds that “[a]ll that is required is proof that the statute or regulation has been violated.”⁵⁹ Therefore, for a temporary injunction to be issued in this case, the Division must provide proof that Digital and AirCable violated the Virginia Securities Act.

Mr. Bayly’s affidavit supporting the Division’s Motion for Temporary Injunction reports on purchases of securities from Digital and AirCable by Virginia residents. Indeed one Virginia resident purchased securities from AirCable as late as September 9, 2000, subsequent to the Commission’s Subpoena which was issued on August 17, 2000. In its pleadings and during the hearing, Digital and AirCable did not challenge any of the facts contained in Mr. Bayly’s affidavit. Accordingly, I find that the Division has met its burden and has established that Digital and AirCable have violated provisions of the Virginia Securities Act. In order to maintain the *status quo* and prevent further violations of the Virginia Securities Act, the issuance of a temporary injunction is appropriate.

The argument by Digital and AirCable that a temporary injunction is unnecessary because the Virginia Securities Act contains other legal remedies is contrary to the regulatory scheme devised by the General Assembly. Under the reasoning offered by Digital and AirCable, because the Virginia Securities Act contains other legal remedies, injunctive relief would never be available. But, the General Assembly explicitly provided for injunctive relief in the Virginia Securities Act presumably for situations such as this where action must be taken to protect the public from unlawful acts.

As to the likelihood of success by the Division, the statement by Digital and AirCable that the Division “has proffered no evidence in support of its injunctive motions” simply ignores the uncontroverted affidavit of Mr. Bayly filed by the Division. On brief, Digital and AirCable acknowledge that they “may have inadvertently failed to file certain forms with the Commission.”⁶⁰ Indeed, an application by Digital for registration was filed with the Division on April 3, 1998, and withdrawn on April 16, 1998, due to negative net worth and a “going concern” letter from its auditor.⁶¹ Nonetheless, Digital continued its sales of securities after

⁵⁴ Division Brief at 9.

⁵⁵ *Id.*

⁵⁶ 225 Va. 310 (1983) (“*Carbaugh*”).

⁵⁷ 229 Va. 349 (1985) (“*SPCA*”).

⁵⁸ *Carbaugh* at 315.

⁵⁹ *SPCA* at 354.

⁶⁰ Digital and AirCable Brief at 8.

⁶¹ Bayly Affidavit at 2, Thomas, Tr. at 39.

withdrawing its registration.⁶² Consequently, based on the record of this case, the Division appears likely to succeed in an enforcement action against Digital and AirCable.

The contention made by Digital and AirCable that to receive a temporary injunction the Division must demonstrate irreparable injury is not applicable in this situation. As discussed above, under Virginia law all that is required in this case is that the Division provide proof that Digital and AirCable violated the Virginia Securities Act.

Finally, Digital and AirCable assert that the institution of a temporary injunction will create undue hardships for Digital as it will eliminate “numerous federal and state exemptions.”⁶³ That is, Digital and AirCable claim that a temporary injunction issued by the Commission as to Virginia would limit federal and state security registration options and would require disclosure in any future offering circular, private placement memorandum, or prospectus.⁶⁴ This is particularly important to Digital, which holds licenses to operate digital wireless television systems in eighteen states, including Virginia.⁶⁵ Further, Digital and AirCable avow that they currently are not offering and have no plans to sell securities in Virginia.⁶⁶ Therefore, based on the relative weight of hardships, Digital and AirCable submit that the temporary injunction should be denied.

The arguments raised by Digital and AirCable in regard to the impact of a temporary injunction are systemic to the use of injunctive relief under the Virginia Securities Act. In other words, the impact of an injunction on federal and state exemptions is not unique to Digital and AirCable. Any injunction issued pursuant to the Virginia Securities Act will have the same impact on federal and state exemptions. The focus of the analysis remains on whether there has been a violation of the statute. Assurances by Digital and AirCable that they are not offering securities stands in stark contrast to evidence of securities sales in Virginia as late as September 9, 2000. Thus, while Digital and AirCable were contemplating whether to answer the Commission’s Subpoena and asserting Fifth Amendment Privilege, unregistered securities were being sold to Virginia investors. Therefore, for the reasons stated above, I find that the temporary injunction should be issued.

Accordingly, ***I RECOMMEND*** that the Commission enter an order:

(1) ***ADOPTING*** my findings;

(2) ***DIRECTING*** AirCable to respond fully to the Subpoena To Produce Documents issued by the Commission on August 17, 2000;

(3) ***FINING*** AirCable, pursuant to § 12.1-33 of the Virginia Code, \$5,000.00 for failing to comply with a Commission order plus \$5,000.00 per day beginning one day after the

⁶² *Id.*

⁶³ Digital and AirCable Brief at 8.

⁶⁴ *Id.* at 9.

⁶⁵ *Id.*

⁶⁶ Exhibit GSN-5 at 5.

Commission's judgment order in this proceeding until AirCable fully satisfies the Subpoena To Produce Documents issued by the Commission on August 17, 2000;

(4) **GRANTING** the Division's Motion for Temporary Injunction enjoining Digital and AirCable from offering and selling securities in and from the Commonwealth of Virginia for a period of one hundred and twenty (120) days beginning from the date of the Commission's judgment order in this proceeding; and

(5) **DISMISSING** this case from the docket of active matters.

COMMENTS

The parties are advised that pursuant to Rule 5:16(e) of the Commission's Rules of Practice and Procedure,⁶⁷ any comments to this Report must be filed with the Clerk of the Commission in writing in an original and fifteen copies within fifteen days from the date hereof. Such comments may note a party's objections to any of the rulings, findings of fact or recommendations, and may offer remarks or clarifications regarding those findings and recommendations. The mailing address to which any such filing must be sent is Document Control Center, Post Office Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate at the foot of such document certifying that copies have been mailed or delivered to all counsel of record.

Respectfully submitted,

Alexander F. Skirpan, Jr.
Hearing Examiner

⁶⁷ 5 VAC 5-10-420 F.